

WRIT PETITION NO. 4 OF 2003

1. Mr. Caridade Xavier
Sequeira, major of age,
businessman, r/o
Vaddem, Socorro,
Bardez, Goa, and

2. Mrs. Jessie Mary
Sequeira, major of
age, wife of C. X.
Sequeira, housewife,
r/o Vaddem, Socorro,
Bardez, Goa.

... Petitioners.

Versus

Mr.Savio Valles,
major of age, businessman,
r/o Vaddem, Socorro,
Bardez, Goa, represented
through constituted P.A.
Smt. Sarita Pereira of
amjor age, r/o Santa Inez,
Panaji, Goa.

... Respondent.

Shri J. E.Coelho Pereira, Senior Advocate with Shri S.
Karpe, advocate for the petitioners.

Shri S. Walwaikar, advocate for the respondent.

CORAM : F. I. REBELLO, J.

DATE : 5th June, 2003.

ORAL JUDGMENT

Rule. Respondent waives service. Heard forthwith.

2. The sole respondent in this petition is Savio Valles, who is the plaintiff in Regular Civil Suit No.17/01/JR/I. The suit was filed for a declaration that he has easementary rights on the suit way and for a further decree to restrain defendant nos. 1 and 2/petitioners herein, from closing down the suit way or reducing its width by

erecting a compound wall. The other relief is a claim of ownership to the property surveyed under no.205/24, by way of adverse possession. A Miscellaneous Application was taken being Civil Misc. Application No.36/2001. The Appellate Court by the impugned Order allowed the appeal and granted an injunction restraining petitioner no.1 from proceeding with the construction of the wall, more particularly, on the southern side of survey no.205/23, where it cuts across the suit access from the main road on the West. It is this Order which is the subject-matter of the present petition.

3. On behalf of the petitioners, a preliminary objection has first been raised that all the parties to the proceedings have not been joined and, as such, the petition ought to be rejected on that count. In the suit filed, the respondent in paragraph 2 has described that it is the petitioners who claim ownership of the property. It is the petitioners who are, therefore, vitally affected by the grant of the injunction. A permanent injunction was also sought by way of easementary right against the present petitioners. Defendant no.9, who is also referred to, has been described in the plaint as one Mrs. Alice Gomes, of major age, address unknown. Considering the relief granted, in my opinion the petition has been properly constituted and, as such, the preliminary objection as raised has to be rejected.

4. The Appellate Court while reversing the Order of

the trial Court and directing injunction, has proceeded basically on the footing that in the plan submitted by the petitioners an access of 3 mts. is shown. Even after accepting this document and further the claim of the respondent himself of an access, the Appellate Court has proceeded to grant a blanket injunction restraining the respondent from constructing the wall in respect of the property. This clearly would disclose an error apparent, as apart from the claim of adverse possession, no other rights were claimed by the respondent herein over the suit property. The Appellate Court while reversing the order has also not proceeded on the footing that the respondent herein had made out a case of possession over the rest of the property. To my mind, therefore, the order of the Appellate Court suffers from error apparent and consequently the Order will have to be modified to the extent that the injunction be restricted only to the access as claimed by the respondent herein.

There is some dispute as to what is the real access. In the light of that, the trial Court is directed to appoint a Commissioner to find out the access as claimed by the parties and localize the same. The injunction thereafter be in respect of the access as localized by the Commissioner and accepted by the trial Court. Once the access is localized, the injunction will stand limited to that access with such other directions which the trial Court may feel are required for maintaining the status quo in respect of the suit

property. Costs of the commission to be borne by both the parties equally.

5. Rule made absolute accordingly. In the circumstances of the case, there shall be no order as to costs. The commission to be completed at any rate within two months from today.

F. I. REBELLO, J.

mc.